TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 32.

CHARLES H. NUTTING, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

FILED FEBRUARY 26, 1900.

(17,655.)

(17,655.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 541.

CHARLES H. NUTTING, PLAINTIFF IN ERROR,

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THE COMMONWEALTH OF MASSACHUSETTS.

IN ERROR TO THE SUPERIOR COURT OF THE STATE OF MASSACHUSETTS.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 6, 1900.

1 UNITED STATES OF AMERICA, *ss:*

[Seal of the Circuit Court, Massachusetts.]

The President of the United States to the honorable the judges of the superior court of the Commonwealth of Massachusetts, holden at Boston, within and for the county of Suffolk, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, before you or some of you, being the highest court of law or equity of the State of Massachusetts in which a decision could be had in the suit between The Commonwealth of Massachusetts, plaintiff, and Charles H. Nutting, defendant, in a plea of not guilty, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Charles H. Nutting, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the tenth day of March next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventeenth day of February, in the year of our Lord one thousand nine hundred.

ALEX. H. TROWBRIDGE,
Clerk of the Circuit Court of the United States, District of Massachusetts.

Allowed by—
ALBERT MASON,
Chief Justice Superior Court.

2 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

And now, here, the judges of the superior court of said Commonwealth make return of this writ by annexing hereto and sending herewith, under the seal of the said superior court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In testimony whereof I, John P. Manning, clerk of said superior court for the transaction of criminal business within and for said county, have hereto set my hand and the seal of said court this nineteenth day of February, A. D. 1900.

Seal of the Superior Court.

JOHN P. MANNING, *Clerk.*

3 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

To all persons to whom these presents shall come, Greeting:

Know ye that among the records of our superior court for the transaction of criminal business within and for the county of Suffolk, begun and holden at Boston on the first Monday of January, A. D. 1900, it is thus contained, the following being the entire record in the case of The Commonwealth *versus* Charles H. Nutting.

The following being the indictment found against said Nutting by the grand jurors on the eleventh day of March, A. D. 1899:

4 *Indictment.*

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *To wit:*

At the superior court begun and holden at the city of Boston, within and for the county of Suffolk, for the transaction of criminal business, on the first Monday of March, in the year of our Lord one thousand eight hundred and ninety-nine, the jurors for the Commonwealth of Massachusetts on their oath present that Charles H. Nutting, of Boston aforesaid, on the eighteenth day of November, in the year of our Lord one thousand eight hundred and ninety-eight, at Boston aforesaid, did act in the negotiation and transaction of unlawful insurance with a foreign insurance company not admitted to do business in said Commonwealth by then and there for one William McKie, of said Boston, negotiating with and procuring to be issued by divers certain individuals as insurers a certain contract and policy of insurance against loss upon a certain vessel of said McKie there situate, the said individuals then being associated, organized, and engaged as principals in the business of insurance under and by authority of the government of the United Kingdom of Great Britain and Ireland, and said individuals not being then and there admitted to do insurance business in said Commonwealth

according to law, against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

A true bill.

JAMES N. THOMPSON,
Foreman of the Grand Jury.

M. J. SUGHRUE,
1st Ass't District Attorney.

March 11, 1899.—Returned into said superior court by the grand jurors and ordered to be filed.

[Seal of the Superior Court.]

Attest: JOHN P. MANNING, *Clerk.*

5 On the fourteenth day of said March said Nutting came into said court and was set at the bar, and, having said indictment read to him, he said thereof that he was not guilty.

Thereupon the court ordered that said Nutting recognize to said Commonwealth, with sufficient sureties in the sum of one hundred dollars, for his appearance before said court from day to day and sitting to sitting to answer further to said indictment, and abide the final decree and order of said court thereon, and not depart without leave, and said Nutting recognized personally in said sum and deposited said sum with the clerk of said court in lieu of said sureties.

On the twenty-fourth day of April, A. D. 1899, the said Nutting was set at the bar, and for trial put himself upon the country, and the Commonwealth did the like by its attorney, John D. McLaughlin, Esquire.

A jury was empanelled and sworn to try the issue, to wit, Caleb B. Buckman, foreman, and eleven of his fellows, who, after hearing and understanding all matters and things concerning the same, returned their verdict, and on oath said that said Nutting was guilty.

On the eighth day of May, A. D. 1899, the said Nutting, by his attorney, filed exceptions to the rulings of the court, time having been extended for the filing of the same.

On the fourteenth day of June, A. D. 1899, the exceptions aforesaid being examined and found conformable to the truth were allowed, and were ordered to be transmitted to the supreme judicial court of said Commonwealth, and said indictment was ordered to be continued to await the determination of the justices of said court, and said exceptions are as follows:

6 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

Superior Court for the Transaction of Criminal Business, April Sitting, A. D. 1899.

COMMONWEALTH
vs.
CHARLES H. NUTTING.

Defendant's Exceptions.

This was an indictment under chapter 522 of the Acts of 1894, for negotiating and transacting unlawful insurance with a foreign insurance company not admitted to do business in the Commonwealth of Massachusetts.

A copy of the indictment is hereto annexed and marked "A."

All the evidence in the case was submitted to the jury upon an agreed statement of facts in writing, a copy of which is hereto annexed and marked "B."

At the close of the evidence the defendant's counsel requested the court to make certain separate rulings, a copy of which *are* hereto annexed and marked "C."

The court refused to make any or all of said rulings, and the defendant duly excepted to such refusals. The court thereupon instructed the jury that upon the evidence set out in said agreed statement of facts, they would be warranted in finding the defendant guilty, and the defendant duly excepted thereto.

The jury thereupon returned a verdict of guilty, and the defendant, being aggrieved by the foregoing refusals to rule as requested and by the foregoing ruling, prays that his exceptions may be allowed.

By his attorneys, CARVER & BLODGETT.

June 14, 1899.—Exceptions allowed.
CALEB BLODGETT,
Justice of the Superior Court.

7 "A."

Indictment.

COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *To wit:*

At the superior court, begun and holden at the city of Boston, within and for the county of Suffolk, for the transaction of criminal business, on the first Monday of March in the year of our Lord one thousand eight hundred and ninety-nine.

The jurors for the Commonwealth of Massachusetts on their oath present, that Charles H. Nutting, of Boston aforesaid, on the eighteenth day of November in the year of our Lord one thousand eight hundred and ninety-eight at Boston, aforesaid, did act in the

negotiation and transaction of unlawful insurance with a foreign insurance company not admitted to do business in said Commonwealth, by then and there, for one William McKie of said Boston, negotiating with, and procuring to be issued by, divers certain individuals as insurers, a certain contract and policy of insurance against loss upon a certain vessel of said McKie there situate, the said individuals then being associated, organized, and engaged as principals in the business of insurance, under and by authority of the Government of the United Kingdom of Great Britain and Ireland, and said individuals not being then and there admitted to do insurance business in said Commonwealth according to law.

Against the peace of said Commonwealth and contrary to the form of the statute in such case made and provided.

A true bill.

JAMES N. THOMPSON,
Foreman of the Grand Jury.

M. J. SUGHRUE,
First Assistant District Attorney.

"B."

Agreed Statement of Facts.

It is agreed that some time prior to the eighteenth day of November, 1898, Charles H. Nutting, of Boston, solicited from one William McKie, a ship-builder in Boston, the business of procuring insurance upon a vessel then in process of construction by said McKie in said McKie's ship yard in said Boston. That said Nutting was at said time a licensed insurance broker in said Boston and was at said time attorney and agent of Johnson & Higgins, average adjusters and insurance brokers, having an office in said Boston at 12 Central street in charge of defendant and another and having a principal office in New York city, New York.

That some time after said McKie was so solicited by defendant for said business as aforesaid, said Nutting, acting as agent for said Johnson & Higgins, secured the authority of said McKie to the placing of a contract of insurance for £4,124 upon said vessel. That thereupon said Nutting transmitted an order for said insurance to said Johnson & Higgins, of New York and that said Johnson & Higgins at once wrote to John D. Tyson & Company, of Liverpool, England, said John D. Tyson & Company being the Liverpool agents of said Johnson & Higgins, to procure insurance upon the said vessel of said McKie for the amount of £4,124 as aforesaid. That thereupon said John D. Tyson & Company, pursuant to said request to procure a policy of marine insurance, did procure a policy (a copy of which is hereto attached marked "D") to be issued and delivered at Liverpool by the London Lloyds to said John D. Tyson & Company in favor of said Johnson & Higgins and "on account of whom it may concern, as well in their own name as for and in the name and names of all and every other person or persons to whom the same doth, may or shall appertain." Said

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John D. Tyson & Company at the time of receiving said policy advancing and paying the premiums thereon for account of Johnson & Higgins, said John D. Tyson & Company receiving a commission upon said insurance from said Lloyds for and on account of themselves and of said Johnson & Higgins. That at all the times herein mentioned said London Lloyds were individual insurers, citizens of England associated and engaged as principals in the business of insurance under and by authority of the Government of the United Kingdom of Great Brittain and Ireland and carrying on said business in England upon the Lloyds' plan, whereby each associate underwriter becomes liable for a proportionate part of the whole amount insured by a policy. That said John D. Tyson & Company, having received said policy from the said London Lloyds, sent said policy to said Johnson & Higgins of New York, and said Johnson & Higgins in New York having made the endorsement which appears on the back of said policy at the request of said McKie sent said policy by mail to defendant who, thereupon, at Boston, Massachusetts, on the said eighteenth day of November, 1898, sent the same by mail to said McKie. Said London Lloyds not having complied with any of the requirements imposed by the laws of Massachusetts and not being admitted to do insurance business in this Commonwealth according to law.

That said policy was procured for said McKie from said London Lloyds as aforesaid for compensation in the usual course of the business of said Johnson & Higgins and said John D. Tyson & Company and said defendant. That said Charles H. Nutting and said William McKie were at all times mentioned in said indictment, and in this statement, citizens of the Commonwealth of Massachusetts.

That neither said John D. Tyson & Company, nor said Johnson & Higgins, nor said Charles H. Nutting were agents for said London Lloyds except so far as the facts herein stated constitute them such agents, and the term "broker" is not to be interpreted as meaning that they were such agents except so far as the facts herein stated constitute them such agents.

9

For the Commonwealth,

M. J. SUGHRUE,
First Assistant District Attorney.
CARVER & BLODGETT,
Attorneys for Defendant.

"C."

Defendant's Request for Rulings.

First. That on all the evidence in the case, the court should direct the jury to return a verdict of not guilty.

Second. That on all the evidence in the case the jury would not be warranted in finding a verdict of guilty.

Third. That on all the evidence in the case, no unlawful act has been committed by the defendant.

Fourth. That the contract of insurance set forth in the evidence was made entirely outside the Commonwealth of Massachusetts.

Fifth. That the defendant cannot be held criminally liable for an act done without the State; and the last clause of section 3 of chapter 522 of the Acts of 1894 of this Commonwealth, providing that all contracts of insurance on property, lives or interests in this Commonwealth shall be deemed to be made therein, cannot make a contract entered into without the Commonwealth of Massachusetts an act done within the Commonwealth for the purposes of criminal liability, and is null and void in so far as it purports so to do.

Sixth. That so much of section 3 of chapter 522 of the Acts of 1894 of the Commonwealth of Massachusetts as provides that all contracts of insurance on property, lives or interests in this Commonwealth shall be deemed to be made therein, and as attempts to make a contract entered into without the Commonwealth of Massachusetts an act done within the Commonwealth, is contrary to the provisions of the Constitution of the United States, and is unconstitutional and void.

Seventh. That so much of section 87 of chapter 522 of the Acts of 1894 of the Commonwealth of Massachusetts as purports to make illegal such acts as were done by the defendant in this case, is contrary to the provisions of the Constitution of the United States and is unconstitutional and void.

Eighth. That so much of section 98 of chapter 522 of the Acts of 1894 of the Commonwealth of Massachusetts as purports to make illegal such acts as were done by the defendant in this case, is contrary to the provisions of the Constitution of the United States, and is unconstitutional and void.

Ninth. That the defendant acted merely as the agent of the assured in obtaining the contract of insurance set forth in this case.

Tenth. That the defendant in no way represented the London Lloyds (the insurers) in relation to the contract of insurance set forth in this case.

Eleventh. That so much of chapter 522 of the Acts of 1894 of the Commonwealth of Massachusetts as purports to make illegal such acts as were done by the defendant in this case, is contrary to the provisions of the fourteenth amendment of the Constitution of the United States and is unconstitutional and void.

By his attorneys, CARVER & BLODGETT.

"D."

A.

Insurance Policy.

This policy is issued in the form printed and supplied by the government previous to 1st August, 1887, except that the free-of-capture clause has been inserted.

SEAL.

STAMP.

Any person not an underwriting member of Lloyd's subscribing this policy or any person uttering the same if so subscribed, will be liable to be proceeded against under sec. 31, of Lloyd's act.

S. G.

£4,124.

Printed at Lloyd's Royal exchange.

(No. —.)

Be it known that Johnson & Higgins, on a/c of whom it may concern, as well in their own name, as for and in the name and names of all and every other person or persons to whom the same doth, may, or shall appertain, in part or in all, doth make assurance and cause themselves and them and every of them to be insured, lost or not lost, at and from say for and during the space of twelve calendar months commencing at noon 16th November 1898, and ending at noon 16th November 1899. Beginning and ending with Greenwich mean time. In port at Boston except during trial trips in accordance with the terms of the printed slip attached hereto, upon any kind of goods and merchandises, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat and other furniture, of and in the good ship or vessel called the No. 3 ferry-boat whereof —— —— is master, under God, for this present voyage, or whosoever else shall go for master in the said ship, or by whatsoever other name or names the same ship, or the master thereof, is or shall be named or called, beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship as above upon the said ship, &c. STAMP.

And shall so continue and endure, during her abode there, upon the said ship, &c.; and further, until the said ship, with all her ordnance, tackle, apparel, &c., and goods and merchandises whatsoever, shall be arrived at as above upon the said ship, &c., until she hath moored at anchor twenty-four hours in good safety, and upon the goods and merchandises until the same be there discharged and safely landed; and it shall be lawful for the said ship, &c., in this voyage to proceed and sail to and touch and stay at any ports or places whatsoever without prejudice to this insurance. The said ship, &c., goods and merchandises, &c., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at

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£4,124: On hull, tackle, apparel & furniture } Valued as per special
machinery & boilers. } clause attached.

Including materials for construction in yards, shops and docks.

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage, they are, of

the seas, men-of-war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandises and ship, &c., or any part thereof; and in case of any loss or misfortune, it shall be lawful to the assured, their factors, servants, and assigns, to sue, labour, and travel for, in and about the defence, safeguard and recovery of the said goods and merchandises and ship, &c., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute, each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving the property insured, shall be considered as a waiver or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard street, or in the Royal exchange, or elsewhere in London.

Warranted, nevertheless, free of capture, seizure and detention, and the consequences thereof, or of any attempt thereat, piracy excepted, and also from all consequences of hostilities or warlike operations, whether before or after declaration of war.

And so we the assurers are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods, to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured at and after the rate of ten shillings per cent.

In witness whereof, we the assurers have subscribed our names and sums assured in London, 18th November, 1898.

N. B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded; sugar, tobacco, hemp, flax, hides and skins are warranted free from average under five pounds per cent.; and all other goods, also the
12 ship and freight, are warranted free from average under three pounds per cent., unless general, or the ship be stranded.

(In the event of accident whereby loss or damage may result in a claim under this policy the settlement will be much facilitated if immediate notice be given to the nearest Lloyds' agent.)

Subject to the printed clauses attached.

This insurance is to cover also vessel's machinery & boilers in the yard of E. Hodge & Co. and Lockwood's yard at east Boston.

Should a claim arise under this policy it is hereby declared and agreed that the value of said vessel (including hull, tackle, apparel, furniture, machinery and boilers), shall be taken at the aggregate amount that may be insured on said vessel at the time of the accident occur-ing.

Builders' Risks.

Attached to policy per No. 3: Ferry-boat for £4,124: Dated 18th Nov., '98:

This insurance is also to cover all risks of fire, including materials in yards, shops and docks, and all risks of launching and breakage of the ways, and whilst fitting out.

This insurance is also to cover all risks of trial trips as often as required, and all risks whilst proceeding to and returning from the trial course.

With leave to proceed to and from any wet or dry docks, harbours, ways, cradles and pontoons during the currency of this policy.

In case of failure of launch, underwriters to bear all subsequent expenses incurred in completing launch.

Average payable irrespective of percentage, and without deduction of one-third, whether the average be particular or general.

General average and salvage charges as per foreign custom, payable as per foreign statement, and / or per York-Antwerp rules if required; and in the event of salvage, towage, or other assistance being rendered to the vessel hereby insured by any vessel belonging in part or in whole to the same owners, it is hereby agreed that the value of such services (without regard to the common ownership of the vessels) shall be ascertained by arbitration in the manner hereinafter provided for under "collision clause," and the amount so awarded, so far as applicable to the interest hereby insured shall constitute a charge under this policy.

In event of deviation to be held covered at an additional premium to be hereafter arranged.

To cover also while building all damage to hull, machinery, apparel, or furniture caused by settling of the stocks, or failure or breakage of shores, blocking or staging, or of hoisting or other gear, either before or after launching and while fitting out.

With leave to increase value.

To return 6d. per cent. net for every 30 days of unexpired time, if this policy is cancelled and arrival.

Should the above vessel be at sea on the expiration of this policy, it is agreed to hold her covered till arrival at port of destination (provided that before the expiration the assured shall have given notice of intention to so continue) at a *pro rata* monthly premium.

It is also agreed that any changes of interest in the steamer hereby insured shall not affect the validity of this policy.

And it is expressly declared and agreed that no acts of the insurer or insured, in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment.

This insurance also specially to cover loss of or damage to the hull or machinery, through negligence of master, mariners, engineers, or pilots, or through explosions, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull,

or from explosions, riots, or other causes of whatever nature arising either on shore or otherwise, howsoever, causing loss of or injury to the property hereby insured, provided such loss or damage has not resulted from want of due diligence by the owners of the ship, or any of them, or by the manager, and to cover all risks incidental to steam navigation, or in graving docks.

Collision Clause.

And it is further agreed that if the ship hereby insured shall come into collision with any other ship or vessel, and the assured shall in consequence thereof become liable to pay, and shall pay, by way of damages to any other person or persons any sum or sums not exceeding in respect of any one such collision the value of the ship hereby insured, we, the assurers, will pay the assured such proportion of such sum or sums so paid as our subscriptions hereto bear to the value of the ship hereby insured. And in cases where the liability of the ship has been contested with the consent, in writing, of a majority of the underwriters on the hull and / or machinery (in amount), we will also pay a like proportion of the costs thereby incurred or paid; but when both vessels are to blame, then, unless the liability of the owners of one or both of such vessels becomes limited by law, claims under the collision clause shall be settled on the principle of cross-liabilities as if the owners of
13 each vessel had been compelled to pay to the owners of the other of such vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the assured in consequence of such collision.

And it is further agreed that the principles involved in this clause shall apply to the case where both vessels are the property, in part or in whole, of the same owners, all questions of responsibility and amount of liability as between the two ships being left to the decision of a single arbitrator, if the parties can agree upon a single arbitrator, or failing such agreement, to the decision of arbitrators, one to be appointed by the managing owners of both vessels, and one to be appointed by the majority in amount of underwriters interested in each vessel; the two arbitrators chosen to choose a third arbitrator before entering upon the reference. The terms of the arbitration act of 1889 to apply to such reference, and the decision of such single, or of any two of such three arbitrators, appointed as above, to be final and binding.

Provided always that this clause shall in no case extend to any sum which the assured may become liable to pay, or shall pay, for removal of obstructions, under statutory powers, for injury to harbours, wharves, piers, stages and similar structures, consequent on such collision, or in respect of the cargo or engagements of the insured vessel, or for loss of life or personal injury.

£75. Stanley Hoole,
£75. Charles E. Green,
£75. Henry Green,
£75. George F. Green,
£75. Cyril Wintle,
£75. R. G. MacMillan,
£75. H. W. Murray,
£75. I. C. MacMillian,
} J. W. Hoole seventy-five ps. each 18 Nov., 1898.

£75. D. Janson,
£75. F. Barkworth,
£75. G. H. Lloyd,
£75. Percy Janson,
£75. J. Mosenthal,
} per A. H. Henderson seventy-five pds. each 18 Nov., 1898.

£750. One-tenth each.
Geo. H. Faber,
F. Laeisz,
B. R. Fleming,
Geo. Blundell,
J. Taylor Smith,
H. Bunting,
H. L. Faber,
H. H. Andrew,
R. L. Pugh,
E. Hobson,
} One-tenth each of seven hdd. & fifty pds. p. S. Garrard.

£75. F. Elliot Smith, p. S. Garrard, seventy-five pds. 18 Nov., 1898.

£75. C. I. de Rougemont,
£75. G. H. Valentine,
£75. J. E. Barkworth,
£75. H. B. B. Kent,
£75. L. E. Y. Turner,
£75. Edward Murray,
} per G. H. Valentine, seventy-five pds. each 18 Nov., 1898.
21/11.

14 £75. H. G. Poland,
£75. A. Hicks,
£75. J. R. Vaizey,
£75. F. P. Fletcher-Vane,
} p. H. W. Waite, seventy-five pds. each 18 Nov. 1898.

£50. Stephen White,
£50. Wm. B. Liddiard,
£50. Wm. C. Maxwell,
£50. Chas. E. Moser,
£50. L. C. C. Lindsay,
£50. S. J. White,
} p. S. J. White, fifty pds. each 18 Nov. 1898.

£75. Ernest F. Stearns,
£75. John E. Hammick,
} p. J. E. Hammick, seventy-five pds each 18 Nov. 1898.

£50. Holford Secretan,
£50. L. M. Secretan,
£50. T. A. Nicholls,
£50. C. F. Tufnell,
} p. T. A. Nicholls, fifty £ each 18 Nov. 1898. 22/11.

£49. C. A. Hewitt, } p. A. Burchard, forty-nine pd. 18 Nov. 1898.

£125. F. W. Marten, } One hdd. twenty-five pds.

£75. M. Buller,
£75. R. Williamson,
£75. W. Milburn,
£75. A. E. Burr,
£75. E. H. Banks,
£75. C. V. E. Laurie,
£75. A. Bilbrough,
£75. W. H. Anderson,
£75. Cecil E. Laurie,
£75. A. W. Bilbrough,
} Seventy-five pds. each. 22/11. } Thos. Stewart, 18 Nov. 1898.

15 London, 18th Nov., '98.

No. 3 ferry-boat.

12 months noon, 16th Nov., '98.

£4,124: on hull, &c.

Ac...	20.12.5
Policy	1. .1
	£21.13.5

Room 48.

No. 2357.

Johnson & Higgins,
average adjusters and insurance brokers,
5931,
12 Central St., Boston.

In the event of accident whereby loss or damage may result in a claim under this policy, the settlement will be much facilitated if immediate notice be given to the nearest Lloyd's agent.

16170. 12349.

Losses and returns, if any, payable to the city of Boston, or order.
JOHNSON & HIGGINS.

16 *Record.*

This indictment was found and returned into said superior court by the grand jurors on the eleventh day of March, A. D. 1899, and on the fourteenth day of said March, said Nutting came into said court and was set at the bar and having said indictment read to him, he said thereof that he was not guilty. Thereupon the court ordered that said Nutting recognize to said Commonwealth with sufficient sureties in the sum of one hundred dollars for his appear-

ance before said court from day to day and sitting to sitting to answer further to said indictment and abide the final decree and order of said court thereon and not depart without leave, and said Nutting recognized personally in said sum, and deposited said sum with the clerk of said court in lieu of said sureties.

On the twenty-fourth day of April, A. D. 1899, the said Nutting was set at the bar and for trial put himself upon the country, and the Commonwealth did the like by its attorney John D. McLaughlin, Esquire.

A jury was empanelled and sworn to try the issue, to wit, Caleb P. Buckman, foreman and eleven of his fellows, who, after hearing and understanding all matters and things concerning the same, returned their verdict and on oath said that said Nutting was guilty.

On the eighth day of May, A. D. 1899, the said Nutting, by his attorneys, filed exceptions to the rulings of the court, time having been extended for the filing of the same.

On the fourteenth day of June, A. D. 1899, the exceptions aforesaid, being examined and found conformable to the truth, were allowed and were ordered to be transmitted to the supreme judicial court of said Commonwealth, and said indictment was ordered to be continued to await the determination of the justices of said court.

Attest: JOHN P. MANNING, *Clerk.*

[Endorsed:] No. —. Commonwealth *vs.* Charles H. Nutting. Defendant's exceptions. Suffolk county.

17 On the fourth day of January, A. D. 1900, a rescript was received from said supreme court in the words following: "Exceptions overruled."

The following is said rescript:

18 COMMONWEALTH OF MASSACHUSETTS:

Supreme Judicial Court for the Commonwealth, at Boston, January, 1900.

In the case of Commonwealth *vs.* Charles H. Nutting, pending in the superior court for the county of Suffolk—

Ordered, that the clerk of said court in said county make the following entry under said case in the docket of said court, viz:

Exceptions overruled.

By the court:

HENRY A. CLAPP, *Clerk.*

January 4, 1900.

19 *Brief Statement of the Grounds and Reasons of the Decision.*

The legislature has power to prohibit agents of foreign insurers and brokers from soliciting or acting in regard to foreign insurance

in this State even though they shall agree with the assured that they are his agents.

See opinion.

A true copy.
Attest: JOHN P. MANNING, *Clerk.*

19½ [Endorsed:] 10. No. 1450. Supreme judicial court for the Commonwealth. Rescript, Suffolk county. Commonwealth *vs.* Charles H. Nutting. Received Jan. 4, 1900. Copy.

20 On the twenty-ninth day of said January the said Nutting is set at the bar to receive sentence.

It is therefore considered by the court that the said Nutting, for his offence as set forth in said indictment, pay a fine of four hundred dollars, and that he stand committed until said sentence be complied with.

Paid.

21 All and singular which premises we have held good by the tenor of these presents to be exemplified.

In testimony whereof we have caused the seal of our superior court to be hereunto affixed.

Witness Albert Mason, Esquire, chief justice of our said superior court, at Boston, this nineteenth day of February, in the year of our Lord one thousand nine hundred.

[Seal of the Superior Court.]

JOHN P. MANNING, *Clerk.*

22 The following is the application for the writ of error and the assignments of error:

23 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss:*

COMMONWEALTH
vs.
CHARLES H. NUTTING.

To the Honorable Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts:

Your petitioner, the defendant in the above-entitled cause of action, complains that errors of law appear in the record of the above-entitled cause of action, and respectfully petitions for a writ of error to the Supreme Court of the United States, and that you will issue a citation to the Commonwealth of Massachusetts upon said writ of error, and herewith files his assignments of errors as follows:

I.

That upon all the evidence the acts charged in the indictment against said Charles H. Nutting were done without the jurisdiction of the Commonwealth of Massachusetts, and the conviction of said

Charles H. Nutting was for that reason repugnant to the provisions of the Constitution of the United States, and particularly the fourteenth amendment thereof.

II.

That upon all the evidence the acts of said Charles H. Nutting were such as he had right to do under and by virtue of the provisions of the Constitution of the United States, and particularly the fourteenth amendment thereof, and the conviction of said Charles H. Nutting therefor was for that reason repugnant to said provisions of said Constitution.

24 III.

That upon all the evidence the acts of said Charles H. Nutting were such as he had right to do under and by virtue of the provisions of the Constitution of the United States, and particularly the fourteenth amendment thereof; but the courts below interpreted the provisions of chapter 522, Acts of 1894 of the Commonwealth of Massachusetts, and particularly sections 3, 87, 93, and 98 thereof, as intending to forbid said acts of said Nutting and make same unlawful, and thereupon erred in holding that said statutes of said Commonwealth were valid as so interpreted and not repugnant to said provisions of said Constitution.

IV.

That upon all the evidence the negotiating and consummating of the contract of insurance concerned and the delivery of the policy and payment of the premium therefor where done wholly without the jurisdiction of the Commonwealth of Massachusetts, and said Charles H. Nutting had right to do the same under and by virtue of the provisions of the Constitution of the United States, and particularly the fourteenth amendment thereof; but the courts below interpreted chapter 522, Acts of 1894 of said Commonwealth, and particularly sections 3, 87, 93, and 98 thereof, as intending to forbid said acts of said Nutting, and thereupon erred in holding that said statutes of said Commonwealth were valid as so interpreted and not repugnant to said provisions of said Constitution.

V.

That upon all the evidence the only acts of said Charles H. Nutting done within the jurisdiction of said Commonwealth were to
25 seek and receive employment by a citizen of said Commonwealth as the servant of such citizen only, to obtain insurance upon property of his said employer located in said Commonwealth, and, pursuant to such employment and not otherwise, to receive the order of his said employer for said insurance and mail the same to persons in the State of New York, and thereafter, a contract for said insurance on said property of his said employer having been negotiated and consummated by and the policy there-

for delivered to and premium thereon paid by others wholly without the jurisdiction of said Commonwealth, acting in the premises solely as the servants of his said employer, and the said policy having thereafter come into the possession of said Nutting in said Commonwealth, but solely as the servant of his said employer, to mail said policy to his said employer as the owner thereof; that said acts of said Charles H. Nutting so done within said Commonwealth he had right to do under and by virtue of the provisions of the Constitution of the United States, and particularly the fourteenth amendment thereof; but the courts below interpreted the provisions of chapter 522, Acts of 1894 of said Commonwealth, and particularly sections 3, 87, 93, and 98 thereof, as intending to forbid such acts and make the same unlawful, and erred in holding said statutes of said Commonwealth valid and not repugnant to said provisions of said Constitution.

Wherefore the said petitioner, Charles H. Nutting, prays that the said judgment be reversed, annulled, and altogether held for naught, and that he may be restored to all things that he has lost by occasion of said judgment.

CARVER & BLODGETT,
Attorneys for the Defendant.

26 The foregoing application was allowed by the chief justice of said superior court, and said Nutting was ordered by said superior court to furnish a bond, with sureties, in the sum of one thousand dollars to prosecute said writ in said Supreme Court of the United States, and said Nutting furnished said bond as required, and the same was approved by the chief justice of said court.

27 COMMONWEALTH OF MASSACHUSETTS, *Suffolk*, } *ss*:

Superior Court for the Transaction of Criminal Business.

BOSTON, *February 20th*, 1900.

I, John P. Manning, clerk of said superior court, do hereby certify that the foregoing are true copies of the record of said superior court in the case of The Commonwealth *vs.* Charles H. Nutting.

I. Indictment;
II. Record and judgment of said court in said case;
III. Opinion of supreme judicial court of Mass.;
IV. And of all the proceedings in the case, with all things concerning the same, together with the—
V. Original writ, citation, and acknowledgment of service.

Seal of the Superior Court.

In testimony whereof I hereunto set my hand and affix the seal of said superior court, at said Boston, this twentieth day of February, in the year of our Lord one thousand nine hundred.

JOHN P. MANNING, *Clerk.*

28 The following are the opinions of the supreme judicial court for the Commonwealth:

28½ COMMONWEALTH OF MASSACHUSETTS:

BOSTON, *February* 20, 1900.

I certify the annexed to be a true copy of the opinion of the supreme judicial court in the case of Commonwealth *vs.* Nutting, decided on the 4th day of January, 1900.

GEO. F. TUCKER,
Reporter of Decisions.

29 (Copy.)

COMMONWEALTH
vs.
NUTTING.

HOLMES, *C. J.:*

The defendant is indicted for acting in the negotiation and transaction of unlawful insurance by negotiating in Boston with foreign insurers not admitted to do insurance business in this Commonwealth and procuring a policy of insurance upon a vessel in Boston, to be issued by them. The agreed facts sustain the indictment, subject to certain questions which are brought before us by exceptions to a ruling that the facts warranted *by* the jury in finding the defendant guilty and to the refusal of several requests which need not be mentioned in detail.

30 The foundation of the defendant's argument is the decision in Allgeyer *v.* Louisiana, 165 U. S., 578. That was a proceeding by the State to recover a penalty for violating the State law, intended to prevent dealing with any marine insurance company that had not complied with the law. The defendants were the parties insured. The policy, an open one, was issued outside the State, and the only act done within the State was the mailing of a letter describing certain cotton to which the defendants desired the policy to attach. But the court intimate somewhat broadly that a State legislature cannot make it unlawful for a man to make a contract of insurance outside the State, although he resides and is present in the State at the time when the contract is made. It now is contended that, if this is so, it cannot be unlawful for another man to obey a request to get such insurance, if made by the one who wants it, and that the contract in the present case was made outside the Commonwealth on principles which cannot be affected by St. 1894, c. 522, sec. 3. It might be argued further that at the least this was not unlawful insurance, and so that this particular indictment fails, whether the defendant had done a punishable act or not.

31 We bow to the decision and even to the intimations of the case cited without criticism; but that case expressly leaves intact the settled power of the State to impose such conditions as it pleases upon the doing of any business by foreign insurance companies within its borders. Although the reasoning of many of the

cases turns on the fact that such companies are corporations, we apprehend that the power is not dependent upon that fact, but is an unsurrendered portion of the State's general right to legislate. See 165 U. S., 591; Leavenworth *v.* Booth, 15 Kans., 627, 634. One main object in imposing such conditions in this Commonwealth is to secure people against fraudulent or worthless contracts and, in case of litigation, to save them from having to go abroad. See Lamb *v.* Lamb, 4 Biss., 420, 422. We assume, until it is otherwise decided, that the power to enforce these objects will be regarded as too important and substantial to be defeated by a device, even though the device, apart from its purpose, would only embody a common-law right. We are of opinion, therefore, that notwithstanding the right of McKie, if so minded, to apply from Boston to the London Lloyds for insurance, the legislature has power to prohibit the agents of the Lloyds as well as the Lloyds themselves from soliciting business in Boston and to make that prohibition effectual by providing that it shall not be escaped by an agreement making the solicitors the agents of the insured in the transaction. In
32 other words, while the legislature cannot impair the freedom of McKie to elect with whom he will contract, it can prevent the foreign insurers from sheltering themselves under his freedom in order to solicit contracts which otherwise he would not have thought of making. It may prohibit not only agents of the insurers, but also brokers, from soliciting or intermeddling in such insurance, and for the same reasons. What we have said goes very little, if any, further than what is laid down in similar terms in Hooper *v.* California, 155 U. S., 648, 657, 658, and the authority of that case is saved in terms in Allgeyer *vs.* Louisiana, and is recognized again in Orient Ins. Co. *vs.* Daggs, 172 U. S., 557, 566. See, further, Pierce *vs.* People, 106 Ill., 11.

33 What the legislature can do it has done by St. 1894, c. 522. By sec. 3: "It shall be unlawful * * * for any person as insurance agent or insurance broker to make, negotiate, solicit, or in any manner aid in the transaction of" insurance upon any property or interests in this Commonwealth or with any resident thereof, except as authorized by the act. By section 98: "Any person who shall act in any manner in the negotiation or transaction of unlawful insurance with a foreign insurance company not admitted to do business in this Commonwealth or who as principal or agent shall violate any provision of this act in regard to negotiation or effecting contracts of insurance" is subjected to a penalty.

34 Whether the description in the insurance in the indictment as unlawful be rejected as surplusage or whether the insurance be held to be unlawful within the meaning of the act, an indictment because transacted through a broker acting unlawfully, an offence under the statute is set forth, and the defendant properly was convicted. It is unnecessary to consider whether the same result could be reached in another way. Possibly, for the reasons given above, it would be within the power of the legislature to enact that the insurance broker should be regarded as the agent of the insurers, whatever the agreement of the parties, and in that way

reach the result that any contract made through him when he and the insured were here would be made in this State, and thus would be subject to our laws. Possibly it might be argued that such was the effect of our statute, although, if so, it fails to state it as clearly as could be wished. See sections 3 and 87, 90.

Exceptions overruled.

[Endorsed:] Commonwealth *vs.* Nutting.

34½ [Endorsed:[Commonwealth *vs.* Nutting. Certified copy of the opinion of the supreme judicial court.

34½ The following is the original citation and acknowledgment of service:

35 UNITED STATES OF AMERICA, *ss:*

To the Commonwealth of Massachusetts, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the tenth day of March next, pursuant to a writ of error filed in the clerk's office of the superior court of the Commonwealth of Massachusetts, holden for the transaction of criminal business within and for the county of Suffolk, wherein Charles H. Nutting is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Albert Mason, chief justice of the superior court of the Commonwealth of Massachusetts, this seventeenth day of February, in the year of our Lord one thousand nine hundred.

[Seal of the Superior Court.]

ALBERT MASON.

I accept due service of the foregoing citation.

HOSEA M. KNOWLTON,
Attorney General of Mass.

36 Know all men by these presents that we, Charles H. Nutting, of Boston, in the county of Suffolk and Commonwealth of Massachusetts, as principal, and E. P. Greene, of Boston, in said county, and William R. Hedge, of said Boston, as sureties, are held and firmly bound unto the Commonwealth of Massachusetts in the full and just sum of one thousand (1,000) dollars, to be paid to the said Commonwealth of Massachusetts; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this seventeenth day of February, in the year of our Lord one thousand nine hundred.

Whereas lately, at a hearing before the superior court of the Commonwealth of Massachusetts, holden for the transaction of criminal business at Boston, within and for the county of Suffolk, in a suit

depending in said court between the Commonwealth of Massachusetts and Charles H. Nutting, judgment was rendered against the said Charles H. Nutting, and the said Charles H. Nutting having procured a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Commonwealth of Massachusetts, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington on the tenth day of March next:

Now, the condition of the above obligation is such that if
37 the said Charles H. Nutting shall prosecute his writ of error to effect and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void; otherwise to remain in full force and virtue.

C. H. NUTTING. [SEAL.]
E. P. GREENE. [SEAL.]
WILLIAM R. HEDGE. [SEAL.]

Signed and sealed in presence of—
GEORGE BEAN, JR.,

Approved:
H. M. KNOWLTON,
Att'y Gen'r'l.

Approved:
ALBERT MASON, *C. J. S. C.*

A true copy of the bond taken by the judge at the time of the allowance of the writ of error named in said bond, which bond is on file in the office of the clerk of the superior court of the Commonwealth aforesaid, within and for said county.

[Seal of the Superior Court.]

Attest:
JOHN P. MANNING,
Clerk Superior Court Aforesaid.

Endorsed on cover: File No., 17,655. Massachusetts superior court. Term No., 541. Charles H. Nutting, plaintiff in error, *vs.* The Commonwealth of Massachusetts. Filed February 26th, 1900.